



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Baldino's Lock and Key Service, Inc.

File: B-238808

Date: July 9, 1990

Gary R. Baldino, for the protester.
James K. White, Esq., United States Department of Commerce,
for the agency.
James M. Cunningham, Esq., and John F. Mitchell, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Contracting agency properly canceled invitation for bids (IFB) for high security door lock cylinders to replace existing lock cylinders where: (1) use of "brand name or equal" instead of functional specification limited the agency's ability to clearly state its minimum needs; (2) IFB failed to provide precise information about existing cylinder spaces and doors into which the new locks were to fit; and (3) delivery schedule was unduly restrictive.

DECISION

Baldino's Lock and Key Service, Inc., the low bidder under Bureau of the Census invitation for bids (IFB) No. 51-SOBC-9-00043, protests the Bureau's decision to cancel the IFB.

We deny the protest.

The IFB was for the furnishing (without installation) of 2,665 "high security" door lock cylinders and 26,650 associated keys, to replace existing lock cylinders in offices at the Bureau's Suitland, Maryland, Federal Center. The IFB described the locks as "Security Level Three-Schlage Primus" or equal. The specifications required that the lock cylinder incorporate a "dual locking system" consisting of a first locking system containing a six-pin-minimum locking mechanism and a second locking system of five finger pins. These are characteristic of the Schlage design, in which two sets of sawtooth cuts are made on that part of the key which is inserted into the lock: one set of sawteeth is cut along the top of the key and another is milled along the

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side. Although Baldino's now objects to this specification as unduly restrictive to the Schlage design, it did not protest it prior to bid opening. Instead, it offered as an "equal" to the brand-name Schlage product certain models of the KABA brand, Gemini model lock-and-key system manufactured by the Lori Corporation. This system is based on a different design than Schlage's, and utilizes a key whose edges are smooth but which has dimpled impressions in the sides. Although Baldino enclosed with its bid several Lori catalogs and other printed matter, none of it was annotated, highlighted, or otherwise cross-referenced to the IFB specifications--an approach which put the burden on the contracting agency to determine if Lori's product was equivalent to the brand name specified.

The agency's evaluators could not conclude from Baldino's bid submissions that the protester had offered a product with a "dual locking system," and its bid was therefore determined to be nonresponsive. The protester concedes that it did not use the phrase "dual locking system" in its descriptive literature, allegedly because that is a term commonly associated with the Schlage product. (This assertion is disputed by the contracting agency, which has provided copies of descriptive literature from two manufacturers other than Schlage in which the terms "two independent locking mechanisms" and "double locking mechanism" are used.) Nevertheless, the protester argues, the agency should have been able to determine from its descriptive literature--especially an "exploded view" drawing of its mechanism--that it did meet this requirement.

Apart from the responsiveness of Baldino's bid, however, the contracting agency concluded from its post-bid-opening review of the solicitation and the responses received that the IFB was defective and that it therefore should be canceled and the requirement resolicited. Although Baldino's has objected to the cancellation, its principal focus has been the reasonableness of the agency's determination that its descriptive literature did not establish the equivalency of the Lori product to the brand name specified in the IFB. We need not decide this issue, however, since we conclude that the agency otherwise has shown a reasonable basis for its cancellation of the solicitation.

A contracting officer must have a compelling reason to cancel an IFB after bid opening. Federal Acquisition Regulation (FAR) § 14.404-1(a)(1) (FAC 84-53); Pneumatrek, Inc., B-225136, Feb. 24, 1987, 87-1 CPD ¶ 202. Contracting officials have broad discretion to decide whether or not compelling circumstances for cancellation exist and our

Office's review is limited to determining whether the exercise of discretion is reasonable. Phillip C. Clarke Elec. Contractor, Inc., B-226506 et al., June 25, 1987, 87-1 CPD ¶ 629. The failure of a solicitation to set forth specifications adequate to meet the agency's minimum needs constitutes a compelling reason to cancel. Snow White Cleaners and Linen Supply, Inc., B-225636, Mar. 26, 1987, 87-1 CPD ¶ 347.

First, the agency reports, the consensus of procurement and program office officials was that by using the "brand name or equal" type of specification, the agency had limited its ability to clearly state its minimum requirements. In this regard, the record shows that although 13 bids were received, 11 of them were based on supplying the brand name product and--as Baldino's protest illustrates--there were difficulties in determining the equivalency of locks of a design different from the brand name. The agency has decided that rather than base a specification on any one manufacturer's product, as it did here, a better approach would be to draft a specification which describes the agency's needs in functional terms and which, the contracting officer states, "would allow all manufacturers of different locking systems the opportunity to propose and negotiate with the Bureau."

The protester has objected to the suggestion that a negotiated procurement be conducted, on the basis that it would permit the agency to "further discriminate against my product without regard to price." This presumes the agency's determination that Baldino's bid was nonresponsive was an act of discrimination rather than a bona fide technical disagreement, a position we do not find supported by the record. Moreover, we find reasonable the agency's conclusion that it might obtain more effective competition if it described its needs in functional terms, received proposals from manufacturers of products of different design explaining how those needs would be met, and had available the flexibility inherent in a negotiated procurement to conduct discussions, if necessary, to resolve technical and pricing uncertainties.

Second, the agency program office noted in conjunction with its review of Baldino's bid that the solicitation had failed to provide any information that would assure that the items being bought were compatible in diameter to the cylinders that were in the existing doors. Since the Bureau plans to remove and replace lock cylinders in 900 doors, compatibility with the existing doors was important but not addressed in the canceled IFB. The agency concluded that its minimum needs should be met by providing to potential

offerors information concerning the space available for installation of the locks and any restrictions which might be created by the type of tools available to the government employees who would perform the installation or by the design of the doors themselves.

The Bureau, which was to install the locks, clearly needed to provide offerors with precise information concerning the existing doors and the existing lock cylinder spaces in those doors so that the new locks would fit exactly into those spaces and doors. Further, to the extent that the Bureau was willing to consider cylinders smaller or larger than the existing cylinders, it would also need to specify the precise terms under which those other cylinders would be considered for purchase. Finally, responses from several bidders indicated that the IFB may have overstated the agency's minimum needs in requiring all 2,665 lock cylinders and 26,650 keys to be delivered within 45 days of award.

In view of the above, Baldino's protest against the cancellation of the solicitation is denied.

Robert P. Murphy

for
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General Counsel